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5 Attorney for Plaintiff
SEAN HOFFARTH

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 SEAN HOFFARTH,)
11 Plaintiff,)
12)
13 v.)
14 COUNTY OF SAN DIEGO; SAN DIEGO)
15 COUNTY SHERIFF'S DEPARTMENT;)
16 DOES 1 THROUGH 100,)
17 Defendant.)
Case No. **'11CV0450 LAB BLM**

COMPLAINT FOR:

**1. VIOLATION OF CIVIL RIGHT
AND UNUSUAL PUNISHMENT)**
**2. VIOLATION OF CIVIL RIGHT
AND CUSTOM)**
**3. INTENTIONAL INFILCTION
EMOTIONAL DISTRESS**
4. GENERAL NEGLIGENCE
**5. NEGLIGENT INFILCTION O
EMOTIONAL DISTRESS**

DEMAND FOR JURY TRIAL

JURISDICTION

20 1. Jurisdiction is invoked pursuant to Title 28 United States Code § 1343(a)(3), and
21 Title 42 United States Code §§ 1983, 1985 and 1988.

PARTIES

23 2. Plaintiff SEAN HOFFARTH (PLAINTIFF) is an individual residing in the
24 County of San Diego, California;

25 3. Defendant COUNTY OF SAN DIEGO (COUNTY) is a public entity, acting directly
26 and through its agency, the San Diego County Sheriff's Department;

27 4. Defendant SAN DIEGO COUNTY SHERIFF'S DEPARTMENT (SHERIFF'S
28 DEPARTMENT) is also a public entity. Although the SHERIFF'S DEPARTMENT is an agent of

1 Defendant COUNTY, the SHERIFF'S DEPARTMENT is being sued as a separate defendant, as
2 they are also a separate public entity;

3 5. Does 1 through 20, at all times mentioned herein, were and are employees of
4 COUNTY, acting under color of law, who were physicians, nurses, and medical supervisors and
5 administrators at the San Diego County Central Jail (JAIL), responsible for and were hired to
6 provide, supervise, and to ensure the proper administration of the medical care, attention and
7 treatment to detainees at the JAIL. They were responsible for the supervision, training,
8 reprimanding, and administration of medical care and treatment, or lack thereof, rendered to
9 PLAINTIFF and other detainees and for follow-up medical care and treatment for patients. Each is
10 sued in his or her official capacity;

11 6. Does 21 through 100, at all times mentioned herein, were and are employees of
12 COUNTY, acting under color of law, who were and are the deputies at the JAIL, responsible to
13 provide the custodial care and to seek medical care, attention and treatment of all detainees at the
14 JAIL. The deputies responsible for the supervision of detainees, for observing and reporting any
15 unusual activity or circumstances, and responsible for seeking medical care and treatment for
16 detainees, including PLAINTIFF. These defendants failed to supervise, report and refer PLAINTIFF
17 for medical care and treatment when they knew, or should have known, that PLAINTIFF was in need
18 of medical care, and in so doing breached their duty to provide him with access to medical care and
19 treatment. They are sued in their official and personal capacities;

20 7. PLAINTIFF is unaware of the true names and capacities of those defendants sued as
21 DOES 1 through 100, inclusive. PLAINTIFF will amend this Complaint when those names and
22 capacities become known;

23 8. On information and belief, each of the defendants, including each DOE defendant, is
24 the agent, employee, representative or the co-conspirator of each of the other defendants, and in
25 engaging in the conduct herein alleged, did so in furtherance of such relationship;

VENUE

27 9. Venue is proper in this judicial district because the complaint of conduct occurred in
28 this judicial district and each defendant resides or conducts business within this judicial district;

10. PLAINTIFF has complied with the applicable tort claim filing statute and has served on each public agency defendant a timely claim for damages that was denied by each agency prior to filing suit herein. PLAINTIFF has exhausted his Administrative Remedies;

FACTS

11. This action is brought under Title 42 United States Code section 1983, the Eighth and Fourteenth Amendments of the United States Constitution, and pursuant to the general laws of the State of California;

8 12. On or about May 20, 2010, while detained at JAIL, PLAINTIFF developed a rash of
9 unknown origin. Within a few days, the rash had spread from his upper arms and shoulders, to his
10 chest, and eventually down to his legs;

11 13. On or about May 26, 2010, PLAINTIFF requested to see a nurse using the Inmate
12 Medical Request form required by JAIL. PLAINTIFF was never taken to see a nurse or obtain
13 medical care. PLAINTIFF's condition continue to worsen;

14 14. On or about May 29, 2010, while on lockdown, PLAINTIFF again requested to be
15 taken to the nurse by “hitting the button.” This resulted in a deputy personally speaking to
16 PLAINTIFF. PLAINTIFF advised the deputy that he was in pain from the rash, but the deputy
17 refused to take PLAINTIFF to see a nurse or to obtain medical care;

18 15. PLAINTIFF followed this same procedure on or about May 30, 2010, and May 31,
19 2010, each time personally speaking to a deputy and each time advising the responding deputy that
20 he was in pain from the rash. Each time the responding deputy refused to take PLAINTIFF to see a
21 nurse or obtain medical treatment. PLAINTIFF's condition continued to worsen. By this time, the
22 rash had transformed into puss-filled abscesses covering the majority of his body;

16. On or about June 1, 2010, PLAINTIFF attended his sentencing hearing at San Diego
County Superior Court. His attorney asked the Court to note PLAINTIFF's medical condition on the
docket and then order JAIL to provide medical care for PLAINTIFF's condition. Later that evening,
during night count, PLAINTIFF again showed his abscessed leg to a deputy. That deputy took
PLAINTIFF to see a nurse at about 11:00 p.m. The nurse took photos of PLAINTIFF's abscessed
leg and buttocks, gave PLAINTIFF some antibiotics, and made an appointment for him to see a

1 physician two days later;

2 17. On or about June 3, 2010, PLAINTIFF was seen by a physician who diagnosed
3 PLAINTIFF's as having nine separate staph-infected abscesses on various parts of his body
4 including his legs, pelvic area, buttocks and elbow. He was admitted to medical and treated for this
5 condition until on or about June 19, 2010. PLAINTIFF's condition, in fact, became life-threatening;

6 18. On or about June 18, 2010, PLAINTIFF was informed that he was suffering from an
7 infection caused by Methicillin-resistant Staphylococcus aureus (MRSA), which is a "staph
8 infection" caused by a particular strain of staphylococcus bacteria;

FIRST CAUSE OF ACTION

(Policy, Custom or Practice Causing Constitutional Violation)

11 19. Plaintiff realleges and incorporates by reference herein, the allegations contained in
12 each preceding paragraph;

13 20. COUNTY and SHERIFF'S DEPARTMENT maintained a de facto unconstitutional
14 informal and/or formal policy, custom or practice of permitting, ignoring and condoning its agents
15 and police officers to ignore complaints of pain or need for medical attention expressed by arrestees.
16 COUNTY AND SHERIFF'S DEPARTMENT permit officers to make their own uneducated
17 decisions as to whether or not a person really needs medical attention, and to defer such decisions to
18 JAIL personnel whenever possible. This custom, policy, or practice has the result of delaying and
19 denying medical attention for the protection of the health and safety of an arrestee;

20 21. The custom, policy or practice was the legal cause of PLAINTIFF's injuries, and each
21 defendant acting in accordance with this custom, policy, or practice, acted with deliberate
22 indifference to the needs of persons such as PLAINTIFF;

SECOND CAUSE OF ACTION

(Cruel and Unusual Punishment)

25 22. Plaintiff realleges and incorporates by reference herein, the allegations contained in
26 each preceding paragraph;

27 23. Defendants, acting under the color of their authority, and in the course and scope of
28 their employment, were charged with the care of the detainees at the JAIL. They were responsible

for ensuring that detainee's medical needs were met;

24. While detained at JAIL, PLAINTIFF informed DOES 1-100 that he was in pain and that he needed medical attention. He told them that he was in pain and showed them the rash and puss-filled abscesses on his body;

25. COUNTY, SHERIFF'S DEPARTMENT and DOES 1-100 knew or should have known that PLAINTIFF was suffering from a medical condition, specifically an infection, that required medical attention. PLAINTIFF is informed and believes that COUNTY, SHERIFF'S DEPARTMENT and DOES 1-100 maintained a de facto unconstitutional informal and/or formal, policy, custom or practice of ignoring the medical risks to detainees who suffer infections. PLAINTIFF is informed and believes that COUNTY, SHERIFF'S DEPARTMENT and DOES 1-100 also maintained a de facto unconstitutional formal and/or informal policy, custom or practice of ignoring detainees' request for medical care or treatment, even when requested through the proper means ostensibly required by COUNTY and SHERIFF'S DEPARTMENT;

26. As a result of said policy, custom and practice, PLAINTIFF suffered pain and further injury initially caused by the actions of the defendants;

27. The acts of the defendants were willful and malicious such as to entitle PLAINTIFF to an award of punitive damages;

THIRD CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

28. Plaintiff realleges and incorporates by reference herein, the allegations contained in each preceding paragraph;

29. PLAINTIFF is informed and believes and thereon alleges that the defendants, by and through its principals, agents and employees conducted themselves unlawfully in violation of public policy and applicable law as described above with conscious disregard of the result or outcome of such act. The cruel and unusual punishment directed towards PLAINTIFF as a result of the ignoring of his valid and urgent requests for medical attention, constitutes extreme and outrageous conduct by the defendants;

28 ||| 30. Through the outrageous conduct described above, defendants acted with the intent to

1 cause, and with reckless disregard for the probability of causing PLAINTIFF to suffer severe
2 emotional distress;

3 31. At all relevant times, defendants had actual or constructive knowledge of extreme and
4 outrageous conduct described herein, and condoned, ratified and participated in such extreme and
5 outrageous acts.

6 32. As a direct and proximate result of defendants' willful, knowing and intentional acts,
7 and defendants' failure to act, PLAINTIFF has suffered and will continue to suffer mental distress
8 and anguish;

9 33. The acts of the defendants, as alleged herein, were done with fraud, oppression and
10 malice, with a conscious disregard for PLAINTIFF's rights; and with the intent, design and purpose
11 of injuring PLAINTIFF, with an improper and evil motive amounting to malice, in conscious
12 disregard of PLAINTIFF' right. PLAINTIFF is thereby entitled to recover punitive damages against
13 the defendants;

FOURTH CAUSE OF ACTION

(General Negligence)

16 34. Plaintiff realleges and incorporates by reference herein, the allegations contained in
17 each preceding paragraph;

18 35. COUNTY, SHERIFF'S DEPARTMENT and DOES 1-100 (the defendants) had a
19 duty to ensure PLAINTIFF was able to obtain medical treatment for medical conditions;

20 36. COUNTY, SHERIFF'S DEPARTMENT and DOES 1-100 breached their duty of
21 care by negligently failing to provide medical treatment for PLAINTIFF's medical condition, despite
22 his repeated requests for medical care;

23 37. The actions of COUNTY, SHERIFF'S DEPARTMENT and DOES 1-100 were the
24 proximate cause of injury to PLAINTIFF and are liable for his emotional distress, physical injuries,
25 humiliation, fear, anxiety and other special and general damages in amounts to be proven at trial;

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27 | ////

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FIFTH CAUSE OF ACTION

(Negligent Infliction of Emotional Distress)

3 38. Plaintiff realleges and incorporates by reference herein, the allegations contained in
4 each preceding paragraph;

5 39. COUNTY, SHERIFF'S DEPARTMENT and DOES 1-100 were negligent in failing
6 to provide medical care for PLAINTIFF's medical condition, despite PLAINTIFF's repeated
7 requests for care.

8 40. As a result of the defendants' negligent acts as described above, PLAINTIFF nearly
9 lost his life. Since then, PLAINTIFF has suffered serious emotional distress, including anguish,
10 nervousness, grief, anxiety, worry, shock, humiliation and shame.

11 41. The negligence of the defendants was a substantial factor in causing PLAINTIFF
12 serious emotional distress.

JURY TRIAL

14 The PLAINTIFF requests and demands a JURY TRIAL.

PRAAYER

16 WHEREFORE, PLAINTIFF prays for judgment against the defendants as follows:

FIRST CAUSE OF ACTION

(Cruel and Unusual Punishment)

- 19 1. For compensatory damages in the amount of \$5,000,000;

20 2. For enhanced damages, penalties and punitive damages against the non-governmental

21 agencies, as permitted under federal and California law;

22 3. For pre-judgment interest;

23 4. For Attorneys' fees;

24 5. For costs of suit; and

25 6. For such other and further relief as the Court deems just and proper.

26 | ////

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SECOND CAUSE OF ACTION

(Policy and Custom)

7. For compensatory damages in the amount of \$5,000,000;
 8. For enhanced damages, penalties and punitive damages against the non-governmental agencies, as permitted under federal and California law;
 9. For pre-judgment interest;
 10. For Attorneys' fees;
 11. For costs of suit; and
 12. For such other and further relief as the Court deems just and proper.

THIRD CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

13. For compensatory damages in the amount of \$5,000,000;
 14. For enhanced damages, penalties and punitive damages against the non-governmental agencies, as permitted under federal and California law;
 15. For pre-judgment interest;
 16. For Attorneys' fees;
 17. For costs of suit; and
 18. For such other and further relief as the Court deems just and proper.

FOURTH CAUSE OF ACTION

(General Negligence)

19. For compensatory damages in the amount of \$5,000,000;
 20. For enhanced damages, penalties and punitive damages against the non-governmental agencies, as permitted under federal and California law;
 21. For pre-judgment interest;
 22. For Attorneys' fees;
 23. For costs of suit; and
 24. For such other and further relief as the Court deems just and proper.

111

FIFTH CAUSE OF ACTION

(Negligent Infliction of Emotional Distress)

25. For compensatory damages in the amount of \$5,000,000;
 26. For enhanced damages, penalties and punitive damages against the non-governmental agencies, as permitted under federal and California law;
 27. For pre-judgment interest;
 28. For Attorneys' fees;
 29. For costs of suit; and
 30. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: February 28, 2011

s/ CRAIG J. LEFF

Attorney for Plaintiff SEAN HOFFARTH

Form JS-44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS SEAN HOFFARTH		DEFENDANTS COUNTY OF SAN DIEGO; SAN DIEGO COUNTY SHERIFFS DEPARTMENT and DOES 1-100																																																																																																																																																																											
(b) County of Residence of First Listed Plaintiff <u>San Diego</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>San Diego</u> (IN U.S. PLAINTIFF CASES ONLY)																																																																																																																																																																											
(c) Attorney's (First Name, Address, and Telephone Number) Law Office of Craig J. Leff 2207 Catalina Boulevard, San Diego California 92107		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.																																																																																																																																																																											
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<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust																																																																																																																																																																									
<input type="checkbox"/> 150 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking																																																																																																																																																																										
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce																																																																																																																																																																										
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation																																																																																																																																																																										
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racism, Influence and Corrupt Organizations																																																																																																																																																																										
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Ex. Veterans)	<input type="checkbox"/> 350 Motor Vehicle Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit																																																																																																																																																																										
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV																																																																																																																																																																										
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 500 Selective Service																																																																																																																																																																										
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 365 Product Liability	<input type="checkbox"/> 720 Labor/Mgmt Relations Act	<input type="checkbox"/> 550 Securities/Commodities Exchange																																																																																																																																																																										
<input type="checkbox"/> 195 Contact Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act	<input type="checkbox"/> 575 Customer Challenge 12 USC 3410																																																																																																																																																																										
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 580 Other Statutory Actions																																																																																																																																																																										
REAL PROPERTY		<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 750 Texts (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 590 Agricultural Acts																																																																																																																																																																									
		<input type="checkbox"/> 760 Other Legal Action	<input type="checkbox"/> 761 HIA (1955F)	<input type="checkbox"/> 592 Economic Stabilization Act																																																																																																																																																																									
		<input type="checkbox"/> 770 Impls. Ret. Inc. Security Act	<input type="checkbox"/> 762 Black Lung (923)	<input type="checkbox"/> 595 Environmental Matters																																																																																																																																																																									
		<input type="checkbox"/> 780 SSDI Title XVI	<input type="checkbox"/> 763 DIWC/DIWV (405(g))	<input type="checkbox"/> 596 Energy Allocation Act																																																																																																																																																																									
		<input type="checkbox"/> 790 RSI (405(g))	<input type="checkbox"/> 764 SSIID Title XVI	<input type="checkbox"/> 597 Freedom of Information Act																																																																																																																																																																									
		<input type="checkbox"/> 800 Other Immigration Actions	<input type="checkbox"/> 765 RSI (405(g))	<input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice																																																																																																																																																																									
		<input type="checkbox"/> 810 Other Civil Rights	<input type="checkbox"/> 770 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 950 Constitutionality of State Statutes																																																																																																																																																																									
		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 771 RIHC—Third Party 26 USC 7609																																																																																																																																																																										
		<input type="checkbox"/> 830 Patent																																																																																																																																																																											
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		<input type="checkbox"/> 970 Constitutionality of State Statutes																																																																																																																																																																											
V. ORIGIN (Place an "X" In One Box Only)		Appeal to District Judge from Magistrate Judgment																																																																																																																																																																											
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred From another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7																																																																																																																																																																							
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Title 28 USC 1332(a)(3) and Title 42 USC Sections 1983, 1985 and 1988																																																																																																																																																																													
Brief description of cause: While incarcerated in County Jail, Plaintiff was denied needed medical and almost died as a result.																																																																																																																																																																													
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																																																																																																																																																																								
VIII. RELATED CASE(S) IF ANY		(See instructions): JUDGE		DOCKET NUMBER																																																																																																																																																																									
DATE 03/01/2011	SIGNATURE OF ATTORNEY OF RECORD <i>Craig J. Leff</i>																																																																																																																																																																												
FOR OFFICE USE ONLY																																																																																																																																																																													
RECEIPT #	AMOUNT	APPLYING IFF	JUDGE	MAG. JUDGE																																																																																																																																																																									

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SEAN HOFFARTH)
vs.) Case No. _____
)
)
)
)
*County of San Diego, SAN)
Diego Sheriff's Dept AND)
DOES 1-100)
_____)* DECLARATION OF SERVICE
Person Served: _____
Date Served: _____
03/01/11

I, the undersigned declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above named person the following documents:

in the following manner: (check one)

- 1) By personally delivering copies to the person served.
- 2) By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 3) By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of his office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 4) By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mail at San Diego 1:30 p.m. on March 1, 2011

Executed on March 1, 2011 at San Diego County



:\ODMA\PCDOCS\WORDPERFECT\14560\2 May 5, 1999 (10:01am)